

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1224 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
3 to 5 No.

PRAHLADRAI MAGANLAL MEHTA

Versus

STATE OF GUJARAT

Appearance:

MR AMIT J SHAH for Petitioner (Absent)
PUBLIC PROSECUTOR for Respondent No. 1(Absent)

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 19/08/96

ORAL JUDGEMENT

By this petition under Article 227 of the Constitution of India, the petitioner, Prahladrai Maganlal Mehta, has prayed that the order dated June 18, 1986 passed below application Exh.6 for joining the

petitioner as one of the accused persons in Criminal Case No.2392/85 pending before the learned Judicial Magistrate, First Class at Nadiad, be quashed.

It appears that one FIR No.I 81 of 1985 came to be registered at Chaklasi Police Station, District Kheda, on April 22,1985 for the offences punishable under sections 379 and 114 of the Indian Penal Code against one Bipinchandra Dahyabhai Patel and Rushikesh Mehta. It was alleged that both the accused encashed British Postal Order of one Chandubhai Somabhai Patel and used the money for their own use and thereby with common intention both the accused persons are alleged to have committed offence under section 379 of the Indian Penal Code read with section 114 and also under section 52 of the Indian Posts Act. The Criminal Case No.2392/85 came to be registered against both the accused persons on basis of the said charge-sheet in the Court of the learned Judicial Magistrate, First Class, at Nadiad.

In the aforesaid proceedings of Criminal Case No.2392/85, the application Exh.6 for joining the petitioner as one of the accused persons was submitted. The learned Magistrate, by the impugned order, passed the following order:

"Heard. This application is granted as prayed for".

It is abundantly clear from the aforesaid order that the order is vitiated for non-application of mind, for the learned Magistrate has not assigned any reason in support of granting the application. There is nothing on the record to show as to what material is against the petitioner for joining him as one of the accused persons in the pending criminal case. Section 319 of the Code of Criminal Procedure,1973, inter alia, provides that where in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed. The impugned order is laconic. It does not indicate as to what evidence is against the petitioner for arraigning him as one of the accused persons in the said Criminal Case No.2392/85. Under the circumstances, the present application deserves

to be allowed.

On perusal of the record and evidence if the learned Magistrate comes to the conclusion that there is sufficient evidence on record to implead the petitioner as party in connection with the alleged offence under section 379 of the Indian Penal Code, it would be open for the learned Magistrate to pass appropriate order on basis of the evidence or material available and in accordance with law.

In the above view of the matter, there is error apparent on the face of the record in passing the impugned order, inasmuch as the learned Magistrate has not considered the provisions of section 319 of the Code of Criminal Procedure while passing the impugned order.

In the result, the application is allowed. The impugned order passed by the learned Judicial Magistrate, First Class at Nadiad granting application Exh.6 in Criminal Case No.2392/85 is hereby quashed. The stay, if any, stands vacated. The Records and Proceedings be sent to the trial Court forthwith. Rule is accordingly made absolute.
